

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

LUXPRO CORPORATION, a Taiwanese  
corporation,

Plaintiff,

v.

APPLE, INC., f/k/a Apple Computer, Inc.,

Defendant.

Case No. 3:10-cv-03058-JSW

**STIPULATION AND ~~PROPOSED~~  
PROTECTIVE ORDER**

Judge: Hon. Jeffrey S. White

**1. PURPOSES AND LIMITATIONS**

The parties agree that discovery activity will occur in this action. The parties further agree that this discovery is likely to involve production of confidential information from both parties for which special protection from public disclosure and from use for any purpose other than prosecuting or defending this case would be warranted. Accordingly, Plaintiff Luxpro Corporation ("Luxpro" and/or "Plaintiff") and Defendant Apple Inc. ("Apple" and/or "Defendant") (collectively, the "Parties"), hereby stipulate to, and petition the Court to enter, the following Stipulation and Protective Order.

The parties acknowledge that this Stipulation and Protective Order does not confer blanket protections on all material produced in discovery and that the protection it affords extends only to

the limited information or items that are entitled under the applicable legal principles to treatment as confidential. Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the Court to file material under seal.

## 2. DEFINITIONS

2.1 Party: Any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: All items or information, regardless of the medium or the manner in which it is generated, stored or maintained (including, among other things, testimony, transcripts, or tangible things), that is produced or generated in disclosures or responses to discovery in this matter.

2.3 "CONFIDENTIAL" Information or Items: Disclosure or Discovery Material that is non-public and that a Party or non-party in good faith believes must be held confidential to protect personal privacy interests or proprietary commercial or business information, including trade secrets.

2.4 "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” Information or Items: Extremely confidential and/or sensitive CONFIDENTIAL Information or Items whose disclosure to another Party or non-party is likely to cause significant economic harm or significant competitive disadvantage to the Producing Party. The Parties agree that the following information, if non-public, shall be presumed to merit the “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” designation: pricing information, financial data, sales or marketing forecasts or plans, business plans, sales or marketing strategy, engineering documents, testing documents, employee information, and other non-public information of similar competitive and business sensitivity.

2.5 Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: A Party or non-party that produces Disclosure or Discovery Material in this action.

1           2.7    Designating Party: A Party or non-party that designates information or items that it  
2 produces in disclosures or in responses to discovery as CONFIDENTIAL or HIGHLY  
3 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY.

4           2.8    Protected Material: Any Disclosure or Discovery Material that is designated as  
5 CONFIDENTIAL or HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY.

6           2.9    Outside Counsel: Attorneys who are not employees of a Party but who are retained  
7 to represent or advise a Party in this action (as well as their support staffs).

8           2.10   In-House Counsel: Attorneys who are employees of a Party (as well as their support  
9 staffs).

10          2.11   Counsel (without qualifier): Outside Counsel and In-House Counsel (as well as their  
11 support staffs).

12          2.12   Expert: A person with specialized knowledge or experience in a matter pertinent to  
13 the litigation who has been retained by a Party or its Counsel to serve as an expert witness or as a  
14 consultant in this action and who is not a past or a current employee of a Party or of a competitor of  
15 a Party and who, at the time of retention, is not anticipated to become an employee of a Party or a  
16 competitor of a Party. This Stipulation and Protective Order is not meant to modify the Federal  
17 Rules of Civil Procedure regarding experts, except as to the handling of Protected Material.

18          2.13   Professional Vendors: Persons or entities that provide litigation support services  
19 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
20 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors. This  
21 definition includes a professional jury or trial consultant retained in connection with this litigation.

### 22    3.    SCOPE

23           The protections conferred by this Stipulation and Protective Order cover not only Protected  
24 Material (as defined above) but also any information copied or extracted therefrom, as well as all  
25 copies, excerpts, summaries or compilations thereof, plus testimony, conversations or presentations  
26 by Parties or Counsel to or in court or in other settings that might reveal Protected Material.

27           Nothing herein shall impose any restrictions on a Designating Party from disclosing its own  
28 Protected Material as it deems appropriate.

1 It is not the intention of the parties that anything in this Stipulation and Protective Order  
2 shall prevent the use of Protected Material to defend or prosecute this Action.

3 **4. DURATION**

4 Even after the termination of this litigation, the confidentiality obligations imposed by this  
5 Stipulation and Protective Order shall remain in effect until a Designating Party agrees otherwise in  
6 writing or a court order otherwise directs.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 5.1 Procedures for Designating Material for Protection: Any Party to this litigation, or  
9 any non-party who produces Disclosure or Discovery Material, may designate as CONFIDENTIAL  
10 or HIGHLY CONFIDENTIAL — OUTSIDE COUNSEL’S EYES ONLY any Protected Material it  
11 produces, provided it meets the criteria set forth in this stipulation. All Protected Material shall bear  
12 a legend on each page stating that the material is “CONFIDENTIAL” or “HIGHLY  
13 CONFIDENTIAL — OUTSIDE COUNSEL’S EYES ONLY.”

14 Each Party or non-party that designates information or items for protection under this  
15 Stipulation and Protective Order must take care to limit any such designation to specific material  
16 that qualifies under the appropriate standards. A Designating Party must take care to designate for  
17 protection only those materials, documents, items, or oral or written communications that qualify.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
19 are shown to be clearly unjustified, or that have been made for an improper purpose (*e.g.*, to  
20 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses  
21 and burdens on other parties), expose the Designating Party to sanctions.

22 If it comes to a Party’s or a non-party’s attention that information or items that it  
23 designated for protection do not qualify for protection at all, or do not qualify for the level of  
24 protection initially asserted, that Party or non-party must promptly notify all other parties that it is  
25 withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations: Except as otherwise provided in this  
27 Stipulation and Protective Order (*see, e.g.*, second paragraph of 5.2(a), below) or as otherwise  
28

1 stipulated or ordered, material that qualifies for protection under this Stipulation and Protective  
 2 Order must be clearly so designated before the material is disclosed or produced.

3 Designation in conformity with this Stipulation and Protective Order requires:

4 (a) For Information in Documentary Form (apart from transcripts of depositions  
 5 or other pretrial or trial proceedings): That the Producing Party affix the legend  
 6 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” on  
 7 each page that contains Protected Material. In order to speed up the process of producing large  
 8 volumes of Protected Material, multi-page documents in which Protected Material is pervasive may  
 9 be marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES  
 10 ONLY” throughout. Where it is not possible to affix a legend to particular Protected Material, the  
 11 Producing Party shall take reasonable steps to give all Receiving Parties notice of the Protected  
 12 Material’s status as such.

13 A Party or non-party that makes original documents or materials available for  
 14 inspection need not designate them for protection until after the inspecting Party has indicated  
 15 which material it would like copied and produced. During the inspection and before the  
 16 designation, all of the material made available for inspection shall be deemed “HIGHLY  
 17 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY.” After the inspecting Party has  
 18 identified the documents it wants copied and produced, the Producing Party must promptly  
 19 determine which documents qualify for protection under this Stipulation and Protective Order.  
 20 Then, before producing the specified documents, the Producing Party must affix the appropriate  
 21 legend (“CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES  
 22 ONLY”) on each page that contains Protected Material, except that multi-page documents may be  
 23 designated in accordance with the preceding paragraph.

24 (b) For Testimony Given in Deposition Proceedings: Any Party or non-party  
 25 offering or sponsoring the testimony may identify on the record, before the close of a deposition, all  
 26 protected testimony and may further specify any portions of the testimony that qualify as  
 27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY.”  
 28 When it is impractical to identify separately each portion of testimony that is entitled to protection,

1 or when it appears that substantial portions of the testimony may qualify for protection, any Party or  
 2 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the  
 3 deposition or proceeding is concluded) a right to have up to 30 days after receipt of the certified  
 4 transcript to identify the specific portions of the testimony as to which protection is sought and to  
 5 specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL  
 6 – OUTSIDE COUNSEL'S EYES ONLY"). Said transcripts will be treated as "HIGHLY  
 7 CONFIDENTIAL—OUTSIDE COUNSEL'S EYES ONLY" for the duration of the 30 days.  
 8 Testimony, or portions thereof, that are designated for protection shall be covered by the provisions  
 9 of this Stipulation and Protective Order.

10 Transcript pages containing Protected Material must be separately bound by  
 11 the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or  
 12 "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY," as instructed by the Party  
 13 or non-party offering or sponsoring the witness or presenting the testimony.

14 The court reporter shall affix the appropriate legend ("CONFIDENTIAL," or  
 15 "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY") on each transcript page  
 16 containing Protected Material.

17 If the deposition testimony is also recorded, the videographer shall affix the  
 18 appropriate legend ("CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – OUTSIDE  
 19 COUNSEL'S EYES ONLY") on each disc or other form of media containing Protected Material.

20 (c) For Testimony given at Trial or Pretrial Proceedings: The sealing or other  
 21 restriction of transcripts for proceedings before the Court shall be ordered solely at the Court's  
 22 discretion upon request of the Designating Party.

23 (d) For Information Produced in a Form Other than Documentary, and for Any  
 24 Other Tangible Items: The Producing Party shall affix in a prominent place on the exterior of the  
 25 container or containers in which the information or item is stored the legend "CONFIDENTIAL,"  
 26 or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY."

27 5.3 Non-Party's Protected Material Sought to be Produced in this Litigation: The terms  
 28 of this Stipulation and Protective Order are applicable to information produced by a Non-Party in



1 this action and designated as "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – OUTSIDE  
 2 COUNSEL'S EYES ONLY." Such information produced by Non-Parties in connection with this  
 3 litigation is protected by the remedies and relief provided by this Stipulation and Protective Order.  
 4 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional  
 5 protections.

6 (a) In the event that a Party is required, by a valid discovery request, to produce a  
 7 Non-Party's confidential information in its possession, and the Party is subject to an agreement with  
 8 the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

9 (i) promptly notify in writing the Requesting Party and the Non-Party  
 10 that some or all of the information requested is subject to a confidentiality agreement with a Non-  
 11 Party;

12 (ii) promptly provide the Non-Party with a copy of the Stipulated  
 13 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
 14 description of the information requested; and

15 (iii) make the information requested available for inspection by the Non-  
 16 Party.

17 (b) If the Non-Party fails to seek a protective order from this Court within 14  
 18 days of receiving the notice and accompanying information, the Receiving Party may produce the  
 19 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
 20 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
 21 control that is subject to the confidentiality agreement with the Non-Party before a determination by  
 22 the Court.<sup>1</sup> Absent a Court order to the contrary, the Non-Party shall bear the burden and expense  
 23 of seeking protection in this court of its Protected Material.

24 5.4 Inadvertent Failures to Designate and Redesignation: If timely corrected, an  
 25 inadvertent failure to designate qualified information or items does not, standing alone, waive the

26  
 27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of  
 28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its  
 confidentiality interests in this Court.

1 Designating Party's right to secure protection under this Stipulation and Protective Order for such  
 2 material. Upon timely correction of a designation, the Receiving Party must make reasonable  
 3 efforts to assure that the material is treated in accordance with the provisions of this Stipulation and  
 4 Protective Order.

5 A Receiving Party shall not be in breach of this Stipulation and Protective Order for  
 6 any use of such inadvertently-non-designated or inadvertently-mis-designated material before the  
 7 Receiving Party receives notice of the inadvertent failure to designate, unless an objectively  
 8 reasonable person would have realized that the material should have been appropriately designated  
 9 with a confidentiality designation under this Stipulation and Protective Order. Once a Receiving  
 10 Party has received notice of the inadvertent failure to designate pursuant to this provision, the  
 11 Receiving Party shall treat such material at the appropriately designated level pursuant to the terms  
 12 of this Stipulation and Protective Order and/or in accordance with any applicable privileges.

#### 13 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 A Party may challenge a designation of Protected Material. The Party that  
 15 challenges a designation of Protected Material must confer with the Designating Party prior to  
 16 seeking relief from the Court. The parties agree that the process of challenging a designation shall  
 17 begin by providing notice to the Designating Party by conferring directly (in voice-to-voice  
 18 dialogue) with counsel for the Designating Party. The challenging Party must identify the specific  
 19 Bates range(s) for the challenged documents, must explain the basis for its belief that the  
 20 confidentiality designation was not proper.

21 6.2 Judicial Intervention: If the Parties cannot resolve a challenge without court  
 22 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
 23 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
 24 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
 25 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
 26 competent declaration affirming that the movant has complied with the meet and confer  
 27 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a  
 28 motion including the required declaration within 21 days (or 14 days, if applicable) shall



1 automatically waive the confidentiality designation for each challenged designation. In addition,  
2 the Challenging Party may file a motion challenging a confidentiality designation at any time if  
3 there is good cause for doing so, including a challenge to the designation of a deposition transcript  
4 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
5 competent declaration affirming that the movant has complied with the meet and confer  
6 requirements imposed by the preceding paragraph.

7           The burden of persuasion in any such challenge proceeding shall be on the  
8 Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or  
9 impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
10 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file  
11 a motion to retain confidentiality as described above, all parties shall continue to afford the material  
12 in question the level of protection to which it is entitled under the Producing Party's designation  
13 until the court rules on the challenge.

14 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

15           7.1 Basic Principles: A Receiving Party may use Protected Material that is disclosed or  
16 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
17 defending, or attempting to settle this litigation. A Receiving Party may not use Protected Material  
18 for any other purpose, including, without limitation, any other litigation or any business or  
19 competitive function. Such Protected Material may be disclosed only to the categories of persons  
20 and under the conditions described in this Stipulation and Protective Order and may not be  
21 disclosed to the media. When this litigation has been terminated, a Receiving Party must comply  
22 with the provisions of Paragraph 12 below (FINAL DISPOSITION). Notwithstanding the  
23 foregoing, Counsel may always advise its client as it relates to this litigation generally, although is  
24 precluded from specifically identifying materials produced pursuant to this Stipulation and  
25 Protective Order or disclosing the contents thereof.

26           Protected Material must be stored and maintained by a Receiving Party at a location  
27 and in a secure manner ensuring that access is limited to the persons authorized under this  
28 Stipulation and Protective Order.

1           7.2     Disclosure of "CONFIDENTIAL" Information or Items: Unless otherwise ordered  
 2 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
 3 information or item designated "CONFIDENTIAL" only to:

4                   (a)     the Receiving Party's Outside Counsel , as well as employees of said Outside  
 5 Counsel to whom it is reasonably necessary to disclose the information for this litigation;

6                   (b)     up to two (2) current officers, directors, and employees (including one (1) In  
 7 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this  
 8 litigation and who have signed the "Acknowledgment of Confidentiality and Agreement to Be  
 9 Bound by Protective Order" that is attached hereto as Exhibit A;

10                  (c)     Experts (as defined in this Stipulation and Protective Order) of the Receiving  
 11 Party (i) to whom disclosure is reasonably necessary for this litigation, (ii) who have signed the  
 12 "Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" (Exhibit  
 13 A), and (iii) as to whom the procedures set forth in Paragraph 7.4 below have been followed;

14                   (d)     Professional Vendors as defined in this Stipulation and Protective Order;

15                   (e)     the Court, any mediators, and their respective personnel;

16                   (f)     court reporters, their staffs, and professional vendors to whom disclosure is  
 17 reasonably necessary for this litigation;

18                   (g)     during their depositions, witnesses in the action who have signed the  
 19 "Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" (Exhibit  
 20 A); pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
 21 Material must be marked CONFIDENTIAL by the court reporter and may not be disclosed to  
 22 anyone except as permitted under this Stipulation and Protective Order;

23                   (h)     The Producing Party's witnesses; and

24                   (i)     the author of the document or the original source of the information or a  
 25 person who has already seen the document.

26           7.3     Disclosure of "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES  
 27 ONLY" Information or Items: Unless otherwise ordered by the Court or permitted in writing by the  
 28

1 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
2 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” only to:

3 (a) the Receiving Party’s Outside Counsel, as well as employees of said Outside  
4 Counsel to whom it is reasonably necessary to disclose the information for this litigation;

5 (b) Experts (as defined in this Stipulation and Protective Order) of the Receiving  
6 Party (i) to whom disclosure is reasonably necessary for this litigation, (ii) who have signed the  
7 “Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order” (Exhibit  
8 A), and (iii) as to whom the procedures set forth in Paragraph 7.4 below have been followed;

9 (c) the Court, any mediators, and its personnel;

10 (d) court reporters, their staffs, and professional vendors to whom disclosure is  
11 reasonably necessary for this litigation;

12 (e) the author of the document or the original source of the information or a  
13 person who has already seen the document;

14 (f) Professional Vendors as defined in this Stipulation and Protective Order; and

15 (g) The Producing Party’s witnesses.

16 7.4 Procedure for Disclosure of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
17 OUTSIDE COUNSEL’S EYES ONLY” Information or Items to Experts:

18 (a) Before any “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - OUTSIDE  
19 COUNSEL’S EYES ONLY” information, or substance or summary thereof, shall be disclosed to an  
20 Expert, the Expert shall sign and abide by the terms of the Acknowledgment of Confidentiality and  
21 Agreement to Be Bound by Protective Order,” attached as Exhibit A. An Expert who has signed an  
22 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order (Exhibit A)  
23 may be shown “CONFIDENTIAL” information without the need for a further declaration.

24 (b) Unless otherwise ordered by the Court or agreed in writing by the  
25 Designating Party, a Receiving Party that seeks to disclose to an Expert any information or item that  
26 has been designated “HIGHLY CONFIDENTIAL—OUTSIDE COUNSEL’S EYES ONLY” first  
27 must give written notice to the Designating Party that (1) sets forth the full name of the Expert and  
28 the city and state of his or her primary residence, (2) attaches a copy of the Expert’s current resume,

1 (3) identifies the Expert's current employer(s), (4) identifies each person or entity from whom the  
2 Expert has received compensation for work in his or her areas of expertise or to whom the Expert  
3 has provided professional services at any time during the preceding five years, and (5) identifies (by  
4 name and number of the case, filing date, and location of court) any litigation in connection with  
5 which the Expert has provided any professional services during the preceding five years.

6 (c) A Party that provides written notice and provides the information specified in  
7 the preceding paragraph may disclose the subject Protected Material to the identified Expert unless,  
8 within five court days of delivering the request, the Party receives a written objection from the  
9 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

10 (d) A Party that receives a timely written objection must meet and confer with  
11 the Designating Party (through direct voice-to-voice dialogue) to try to resolve the matter by  
12 agreement. If no agreement is reached, the Party objecting to the disclosure of the Expert may file a  
13 motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
14 applicable). Any such motion must describe the circumstances with specificity, set forth in detail  
15 the reasons for which the disclosure to the Expert is reasonably necessary, assess the risk of harm  
16 that the disclosure would entail and suggest any additional means that might be used to reduce that  
17 risk. In addition, any such motion must be accompanied by a competent declaration in which the  
18 movant describes the parties' efforts to resolve the matter by agreement (*i.e.*, the extent and the  
19 content of the meet and confer discussions) and sets forth the reasons advanced by the Designating  
20 Party for its refusal to approve the disclosure. Any such motion must be filed by the objecting party  
21 within seven days of sending such written objection to the Party seeking to disclose the expert.  
22 Following the expiration of seven days, the issue will be moot and the expert sought to be disclosed  
23 will be allowed to review information protected by this Stipulation and Protective Order.

24 In any such proceeding the Party opposing disclosure to the Expert shall bear  
25 the burden of proof.  
26  
27  
28

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
 2 **OTHER LITIGATION**

3 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
 4 would compel disclosure of any information or items designated in this action as  
 5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY,"  
 6 the Receiving Party must so notify the Designating Party in writing (by fax or email, if possible) as  
 7 soon as reasonably possible. Such notification must include a copy of the subpoena or court order.

8 The Receiving Party must also inform in writing as soon as reasonably possible the party  
 9 who caused the subpoena or order to issue in the other litigation that some or all of the material  
 10 covered by the subpoena or order is the subject of this Stipulation and Protective Order. In addition,  
 11 the Receiving Party must deliver a copy of this Stipulation and Protective Order promptly to the  
 12 party in the other action that caused the subpoena or order to issue.

13 The purpose of imposing these duties is to alert the interested parties to the existence of this  
 14 Stipulation and Protective Order and to afford the Designating Party in this case an opportunity to  
 15 try to protect its confidentiality interests in the court from which the subpoena or order issued. The  
 16 Designating Party shall bear the burden and expense of seeking protection in that court of its  
 17 Protected Material. Nothing in these provisions should be construed as authorizing or encouraging  
 18 a Receiving Party in this action to disobey a lawful directive from another court.

19 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
 21 Material to any person or in any circumstance not authorized under this Stipulation and Protective  
 22 Order, the Receiving Party must immediately: (a) notify the Designating Party in writing of the  
 23 unauthorized disclosure (by fax or email) immediately and in no event more than three court days  
 24 after learning of the disclosure; (b) use its best efforts to retrieve all copies of the Protected  
 25 Material; (c) inform the person or persons to whom unauthorized disclosures were made of all the  
 26 terms of this Stipulation and Protective Order; and (d) request such person or persons to execute the  
 27 "Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" (Exhibit  
 28 A).



**10. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

(a) The inadvertent production by a party of Discovery Material subject to the attorney-client privilege, work-product protection, or any other applicable privilege or protection, will not waive the applicable privilege and/or protection if a request for return of such inadvertently produced Discovery Material is made promptly after the Producing Party learns of its inadvertent production.

(b) Upon a request from any Producing Party who has inadvertently produced Discovery Material that it believes is privileged and/or protected, each Receiving Party shall immediately return such Discovery Material and all copies to the Producing Party, except for any pages containing privileged markings by the Receiving Party which shall instead be destroyed and certified as such by the Receiving Party to the Producing Party.

(c) Nothing provided herein will preclude a Party from challenging the designation of the information as purportedly privileged and, subsequently, seeking the court's intervention related thereto.

**11. FILING PROTECTED MATERIAL**

A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.

**12. FINAL DISPOSITION**

Unless otherwise ordered or agreed in writing by the Producing Party, within 90 days after the final termination of this action, each Receiving Party must destroy all Protected Material or return it to the Producing Party. As used in this paragraph, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed upon request by the Producing Party, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 90-day deadline that identifies (by category, where appropriate) all Protected Material that was returned or destroyed and affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this



1 provision, Counsel are entitled to retain one copy of all pleadings, motion papers, transcripts, legal  
 2 memoranda, correspondence, and attorney work product even if such materials contain Protected  
 3 Material. Any such copies that contain or constitute Protected Material remain subject to this  
 4 Stipulation and Protective Order as set forth in Paragraph 4 (DURATION), above. The Court shall  
 5 retain jurisdiction to enforce the terms of this Stipulation and Protective Order.

6 **13. MISCELLANEOUS**

7 13.1 Right to Further Relief: Nothing in this Stipulation and Protective Order abridges  
 8 the right of any person to seek its modification by the Court in the future.

9 13.2 Right to Assert Other Objections: By stipulating to the entry of this Protective  
 10 Stipulation and Protective Order, no Party waives any right it would otherwise have to object to  
 11 disclosing or producing any information or item on any ground not addressed in this Stipulation and  
 12 Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of  
 13 any of the material covered by this Stipulation and Protective Order.

14 13.3 Expert Discovery: Discovery related to testifying experts shall be governed by  
 15 Federal Rule of Civil Procedure 26(a)(2) and 26(b)(4).

16 13.4 No Admissions: Unless the parties stipulate otherwise, evidence of the existence or  
 17 nonexistence of a designation under this Stipulation and Protective Order shall not be admissible for  
 18 any purpose, and adherence to this Stipulation and Protective Order in no way constitutes an  
 19 admission by any party that any information designated pursuant to this Stipulation and Protective  
 20 Order is or is not proprietary, confidential or a trade secret. Further, nothing herein shall be deemed  
 21 to waive any applicable privilege or work product protection, or to affect the ability of a party to  
 22 seek relief for an inadvertent disclosure of material protected by privilege or work product  
 23 protection, or to affect any party's right to use its own documents and its own Protected Material in  
 24 its sole and complete discretion. In addition, adherence to this Stipulation and Protective Order in  
 25 no way constitutes a waiver of any party's right to object to any discovery requests or admission of  
 26 evidence on any grounds or to affect any party's right to seek an order compelling discovery with  
 27 respect to any discovery request.  
 28

1           13.5    Use Of Protected Material By The Designating Party: Nothing in this Protective  
2 Stipulation and Protective Order shall be construed as a limitation on a party's ability to show  
3 materials that the party has designated as Protected Material to whomever the Designating Party  
4 may deem appropriate, nor will it be construed as a limitation on a party's ability to show materials  
5 designated by another party as Protected Material to that Designating Party, including any present  
6 employee thereof.

7           13.6    Use of the Stipulation and Protective Order: This Stipulation and Protective Order is  
8 for the sole purpose of facilitating discovery in the above-styled and numbered cause, and the  
9 Protected Material obtained under this Stipulation and Protective Order's protection may only be  
10 used for this case. It is expressly ordered that this Stipulation and Protective Order will not, in any  
11 manner, be disclosed to the jury in the above-styled and numbered cause. It is further ordered that  
12 this Stipulation and Protective Order will not be used, in any manner or form, direct or indirect, as  
13 evidence in any trial or any hearing, or referred to in any trial or any hearing on the merits of the  
14 case, except in a hearing that involves issues related to the enforcement of any provision of this  
15 Stipulation and Protective Order.

16           13.7    Parties other than the retaining party shall not at any time contact, communicate  
17 with, or depose non-testifying consultants regarding the subject matter of this litigation, other than  
18 as a percipient witness. The identification of any non-testifying consultant does not waive or detract  
19 from any work product or other protection that would otherwise apply.  
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1           **IT IS SO STIPULATED.**

2   Dated: October 18, 2011

PENELOPE A. PREOVOLOS  
STUART C. PLUNKETT  
ALEXEI KLESTOFF  
MORRISON & FOERSTER LLP

3  
4  
5           By: /s/ Stuart C. Plunkett  
6               Stuart C. Plunkett  
7               Attorneys for Defendant APPLE INC.

8  
9   Dated: October 18, 2011

By: /s/ Patrick J. Conroy  
Patrick J. Conroy

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Attorneys for Plaintiff Luxpro Corporation

**IT IS SO ORDERED.**

Dated: October 19, 2011


  
Hon. Jeffrey S. White  
United States District Judge

EXHIBIT AACKNOWLEDGMENT OF CONFIDENTIALITY AND AGREEMENT TO BE BOUND BY  
PROTECTIVE ORDER

I, \_\_\_\_\_, declare:

1. I reside at \_\_\_\_\_.

2. I have read the Stipulation and Protective Order ("Order") in *Luxpro Corp. v. Apple Inc.*, Northern District of California, Case No. 10-CV-03058 JSW.

3. I am familiar with the contents of the Order and agree to comply and be bound by the provisions thereof.

4. I will not divulge to persons other than those specifically authorized by the Order, and will not copy or use except solely for the purposes of this litigation and only as expressly permitted by the terms of the Order, any Confidential or Highly Confidential Information obtained pursuant to the Order.

5. By signing below, I hereby agree to submit to the jurisdiction of the courts of the State of California for resolving any and all disputes regarding the Order and this Declaration Regarding Confidentiality. I further agree that any and all disputes regarding the Order and this Declaration Regarding Confidentiality shall be governed by the laws of the State of California, and that the district court for the Northern District of California shall be the sole and exclusive venue for resolving any disputes arising from the Order and this Declaration Regarding Confidentiality.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Address: